

**STATE OF NORTH DAKOTA**  
**SECURITIES COMMISSIONER**

IN THE MATTER OF: )  
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Grupo Inverso Rio del Sol; Paul Enright; )  
Kevin Mark Skow a/k/a K. Mark Skow )  
a/k/a Mark Skow; Ronald Sparkman, et al. )  
 )

**RECOMMENDED  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER**

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On November 3, 2000, after an investigation, the Securities Commissioner (“Commissioner”) issued a Cease and Desist Order, Notice of Civil Penalty, and Notice of Right to Request a Hearing (“November 3 Order”), regarding Grupo Inverso Rio del Sol (“Rio del Sol”); Paul Enright; Kevin Mark Skow a/k/a K. Mark Skow a/k/a Mark Skow; Ronald Sparkman; and their officers, directors, agents, and employees (“Respondents”). In the November 3 Order, the Commissioner cited violations by the Respondents of several provisions of N.D.C.C. chapter 10-04 as the bases for his filing the November 3 Order. Essentially, the November 3 Order alleges the sale of unregistered securities by the Respondents, the Respondents not registering as agents or brokers in North Dakota, and the Respondents failing to share significant disciplinary histories in their solicitations with North Dakota residents investing as a result of their solicitations.

On November 21, 2000, through counsel, Mr. Kent Morrow, Bismarck, the Respondents requested a hearing on the November 3 Order. *See* November 21, 2000, Request for Hearing with attachments (July 30, 1999, letter; January 26, 1999, Escrow Agreement; and January 20, 1999, Settlement Agreement). On November 24, 2000, the Commissioner requested the designation of an administrative law judge (ALJ) from the Office of Administrative Hearings to conduct a hearing and to issue recommended findings of fact and conclusions of law, as well as a

recommended order, in regard to the November 3 Order. On November 29, 2000, the undersigned ALJ was designated.

On January 23, 2001, the ALJ scheduled a prehearing conference on this matter. *See* January 23, 2001, Notice of Prehearing Conference. It was held on January 30, 2001. The parties indicated that they were not ready for a hearing and needed more time for discovery. On January 31, 2001, the ALJ scheduled a second prehearing conference. *See* January 31, 2001, Prehearing Conference Summary and Notice of Second Prehearing Conference. The second prehearing conference was held as scheduled on March 1, 2001. As a result of that prehearing conference, the ALJ issued a Notice of Hearing on March 2, 2001. The notice scheduled a March 29, 2001, hearing. The March 29 hearing was postponed at the request of counsel for the Respondents so that each of the Respondents could engage separate counsel. On March 28, 2001, the ALJ issued a Notice of Rescheduled Hearing. That notice rescheduled the hearing for May 4, 2001.

The hearing was held as rescheduled on May 4, beginning at 9:00 a.m. in the Office of Administrative Hearings, Bismarck, North Dakota. Mr. Matthew Bahrenburg, Bismarck, represented the Commissioner at the hearing. Respondent Ronald Sparkman was present at the hearing and was represented at the hearing by Mr. Morrow. Neither of the other individual Respondents, Paul Enright or Kevin Mark Skow, were present at the hearing. However, Mr. Morrow said that he was still representing all of the Respondents. The Commissioner had subpoenaed all of the individual Respondents to appear at the hearing by serving counsel, but only Mr. Sparkman appeared. Mr. Morrow said that he mailed the applicable Commissioner's subpoena to each of the individual Respondents at the addresses he had for them.

At the hearing, Mr. Bahrenburg called four witnesses, Mr. Sparkman, Mr. Bernard Schumacher, Mr. Chuck Huber, and Mr. Doug Smith. Mr. Smith is an investigator with the Securities Commissioner's office. Mr. Bahrenburg offered six exhibits (exhibits 4-9) which

were all admitted. Mr. Morrow called no additional witnesses. He offered three exhibits (exhibits 1-3) which were all admitted. Counsel each gave an opening statement and closing oral argument.

Based on the evidence presented at the hearing and the oral argument of counsel, the administrative law judge makes the following recommended findings of fact and conclusions of law.

### **FINDINGS OF FACT**

1. In 1996, Bernard Schumacher, a North Dakota resident, and Dakota Partners, LLP, a partnership comprised of Chuck Huber and David Wisdom, two North Dakota residents, each entered into separate Subscription Agreements with Rio del Sol, a Bolivian gold mining corporation.<sup>1</sup> Schumacher and Dakota Partners each agreed to purchase 200,000 shares of Samurai securities.<sup>2</sup> For such investment by Schumacher and Dakota Partners, Rio del Sol agreed to deliver certificates of Samurai representing the units or shares of securities purchased.<sup>3</sup> The cost of these shares of securities was \$100,000 to each investor. *See* Exhibit 3 and attachments to Request for Hearing.

2. Paul Enright, Kevin Mark Skow, and Ronald Sparkman, the individual Respondents in this matter, were each involved in the offer and sale of these shares of securities. In other words, they were each involved in some capacity in the solicitation of the investment.

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<sup>1</sup> Rio del Sol at about that same time entered into a preliminary reorganization agreement with Samurai Capital, Inc., a Nevada corporation ("Samurai") whereby the management and shareholders of Rio del Sol controlled Samurai and the common stock of Samurai, and the Samurai stock was to be listed for public trading on the National Association of Securities Dealers, Inc., Electronic Bulletin Board, within 60 days of entering into the definitive reorganization agreement with Samurai. Exhibit 3.

<sup>2</sup> Common Stock and Common Stock Purchase Warrants. Exhibit 3.

<sup>3</sup> The delivery of the Samurai certificates was a condition precedent upon the investors subscription of the shares of securities. Until delivery of the certificates, the purchase price of the units of stock was to be considered a loan. Exhibit 3.

Request for Hearing attachments (Escrow Agreement and Settlement Agreement); and hearing testimony.<sup>4</sup>

3. In the Subscription Agreement, both Schumacher and Dakota Partners acknowledged that they were experienced and sophisticated investors with the ability to withstand the loss of their entire investment. Exhibit 3. *See also* Offering Circular for Sun River Mining, Inc., Exhibit 2.<sup>5</sup>

4. The transaction resulting in the Subscription Agreement with Schumacher and Dakota Partners, *i.e.*, the solicitation and sale of investment in the securities, occurred in North Dakota, Denver, CO, and Miami, FL, on an airplane, and via telephone. Sparkman traveled to North Dakota at least twice to talk to the investors. Once Enright accompanied him. Once Schumacher and Huber flew to Miami to talk to Sparkman about the transaction. Once they both flew to Denver to talk to Sparkman and Enright about the transaction. Either Schumacher or Huber, or both, talked to Enright and Sparkman personally about the securities transaction, and Schumacher and Huber both talked to Skow over the telephone phone about the securities transaction.

5. Another acquaintance or associate of both Schumacher and Huber, a man named Frank Barnes, was involved in the transaction to some extent. He had visited the actual mining site in Bolivia and gave Schumacher and Huber favorable accounts of his visit.

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<sup>4</sup> Skow signed the Subscription Agreement as President of Rio del Sol. Exhibit 3. Enright, Sparkman, and Skow each signed the Settlement Agreement which was an attempt by the parties to settle civilly this failed purchase of securities. Request for Hearing attachments. Hearing testimony was that the investors were repaid a rather large portion of their original investment, but that Rio del Sol and the individual respondents were in default on the Settlement Agreement. Mr. Huber testified that he had been repaid \$85,000.

<sup>5</sup> In the Offering Circular it is specifically stated that “[t]hese securities have not been approved or disapproved by the Securities Commissioner of the State of North Dakota nor has the Commissioner passed upon the accuracy or adequacy of this confidential Offering Circular. Any representation to the contrary is unlawful.” Exhibit 2. At the hearing, Exhibit 2 was described as a Prospectus but it is described within the document as an Offering Circular. A prospectus and offering circular are either similar or synonymous. Black’s Law Dictionary, Sixth Edition, at 1082 and 1222. Exhibit 1 was also introduced and admitted as an Offering Circular. It is so described in the title page. Sun River Mining, Inc. is a Colorado Corporation. Rio del Sol is a wholly owned subsidiary of Sun River Mining, Inc. Exhibit 2, at 13.

6. Sparkman and Enright provided Schumacher and Huber with various information about the securities transaction, including offering circulars. *See* Exhibits 1 and 2. The testimony was inconclusive as to whether the offering circulars were provided before or after the signing of the Subscription Agreement, but is most likely they were provided after the signing of the Subscription Agreement.

7. The securities or investments that are the subject of the securities transactions identified by Exhibit 3 are not registered with the Securities Commissioner in North Dakota and have not been offered for sale or sold in North Dakota as exempt securities or in exempt transactions. Hearing Testimony. *See* Conclusion of Law 2.

8. Neither Enright, Skow, Sparkman, nor the entity Rio del Sol, have been registered as a broker, dealer, agent, or otherwise with the Securities Commissioner in North Dakota. Hearing Testimony. *See* Conclusion of Law 3.

9. Enright, Skow, and Sparkman each have been the subject of disciplinary action by the National Association of Securities Dealers, Inc. (“NASD”). *See* Exhibits 4-9. On August 9, 1990, Enright had his NASD registration revoked for non-payment of fines and costs based on a complaint against him for unauthorized transactions. Exhibits 4 and 5. Enright’s registration was first suspended and he was fined as a result of the complaint, and then his registration was revoked for non-payment of the fines and costs. *Id.* Skow was found to have engaged in excessive trading regarding his clients. As the result of an arbitration hearing in 1996, Skow was ordered to pay the clients \$15,000. Exhibit 9. On December 13, 1996, Skow’s registration was suspended for failure to pay the arbitration award. Exhibit 8. On February 4, 1991, as the result of an investigation of R.B. Marich, Inc., an investment firm and NASD member, Sparkman was censured, fined \$5,000, and his registration was suspended for five business days. Exhibits 6 and 7. Sparkman was implicated in

the investigation and found to have been involved in charging unfair and unreasonable prices in connection with retail principal transactions. Exhibit 7.

10. Neither Enright, Skow, nor Sparkman discussed with or revealed to Schumacher or Huber (or Wisdom) their NASD disciplinary histories. Neither did Schumacher or Huber ask Enright, Skow, or Sparkman whether they had a disciplinary history.

11. Schumacher testified that if he had known about the disciplinary histories of Enright, Skow, and Sparkman he would have investigated more closely before entering into the Subscription Agreement. Huber also testified that if he had known about the three disciplinary histories he would have investigated more closely before entering into the Subscription Agreement. He said that he would have sought more background information. He said that he otherwise saw the three men as credible partners in the venture.

### **CONCLUSIONS OF LAW**

1. The Subscription Agreements entered into by and between Rio del Sol and Schumacher and Dakota Partners, the subject investments in this matter, are each a security under N.D.C.C. § 10-04-02 (15).

2. Each of the individual Respondents has offered for sale and sold the subject investments to North Dakota residents in violation of N.D.C.C. § 10-04-04, because the subject investments were not registered with the Securities Commissioner in North Dakota, were not exempt securities under N.D.C.C. § 10-04-05, and were not a federal covered security. The subject investments were not registered with the Securities Commissioner under N.D.C.C. §§ 10-04-07, 10-04-07.1, 10-04-08, or 10-04-08.1. Also, the subject investments were not offered for sale or sold in exempt transactions under N.D.C.C. § 10-04-06.

3. Enright, Skow, and Sparkman are each in violation of N.D.C.C. § 10-04-10 because they are not registered as brokers, dealers, agents, or otherwise in North Dakota and

were not so registered at the time of the offer for sale and sale of the subject investments in North Dakota.

4. Enright, Skow, and Sparkman are each in violation of N.D.C.C. § 10-04-15(1), (3), (4), because they each had a significant disciplinary history which each omitted to share with the North Dakota residents who invested based on their solicitations in the subject investments. Although each of the North Dakota investors in the subject investments were experienced and sophisticated investors, not revealing significant disciplinary histories to them, especially in light of the fact that the subject investments were considered by all involved in the transaction to be risky investments, was an omission of information that could have deceived and misled them and did help to deceive and mislead them. These significant disciplinary histories were each material facts about the sellers of the subject investments. With accurate information about the Enright, Skow, and Sparkman disciplinary histories, Schumacher and Dakota Partners likely would have acted differently and would have been more cautious. They may have specifically inquired further into the disciplinary histories of the three men. As a result, they may not have entered into the subject transactions.

5. The Commissioner has authority under N.D.C.C. § 10-04-16(1) to impose and collect a civil penalty of not to exceed \$10,000 against each respondent for each violation of the provisions of N.D.C.C. ch. 10-04.

### **RECOMMENDED ORDER**

The greater weight of the evidence shows that Paul Enright, Kevin Mark Skow, and Ronald Sparkman have each violated the provisions of N.D.C.C. chapter 10-04. Essentially, each of the three men has committed three violations of N.D.C.C. chapter 10-04, selling unregistered securities in North Dakota; offering to sell and selling securities in North Dakota and not being registered as a broker, dealer, agent, or otherwise when doing so; and fraudulently

failing to share significant disciplinary histories in their solicitations with North Dakota residents who invested in securities as a result of their solicitations. Each has committed these three violations with regard to two different investors, Bernard Schumacher and Dakota Partners. Therefore, in total, each has committed six separate violations of the provisions of N.D.C.C. chapter 10-04. The attorney for the Commissioner recommended the imposition of a \$60,000 civil penalty, \$10,000 per violation, against each of the individual Respondents. Although imposition of a \$60,000 civil penalty against each individual Respondent seems rather high, the penalty should be substantial, considering the circumstances of this matter, and there is authority to impose such a civil penalty under the law. Accordingly, the ALJ recommends that each of the individual Respondents, Paul Enright, Kevin Mark Skow, and Ronald Sparkman be required to pay a civil penalty to the Commissioner in the amount of \$60,000 for the violations of N.D.C.C. chapter 10-04 proven in this administrative matter.

Dated at Bismarck, North Dakota, this 18th day of May, 2001.

State of North Dakota  
Syver Vinje  
Securities Commissioner

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